



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Interim Executive Director

January 30, 2004

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

NO. 2004/007

**NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION**

**ADOPTION OF PROPERTY TAX RULE 136 – LIMITED LIABILITY COMPANIES AS
QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION**

PUBLIC HEARING: TUESDAY, MARCH 23, 2004 AT 9:30 A.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606, subdivision (c) of the Government Code, proposes to adopt Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2004. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by March 23, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Equalization proposes to adopt Rule 136 to interpret and clarify that organizations eligible for the welfare exemption from property taxation include nonprofit tax-exempt limited liability companies wholly owned by qualified organizations and meeting all the exemption law requirements in section 214 et. seq. The proposed rule is in response to a petition for regulatory action pursuant to Government Code section 11340.6, requesting that the Board of Equalization exercise its rulemaking authority to adopt a regulation that would clarify that a nonprofit tax-exempt limited liability company meeting all the requirements for exemption is an organization eligible to claim the welfare exemption on its property.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed Rule 136 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect costs or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5 (a)(8), the Board of Equalization makes an initial determination that the adoption of Rule 136 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule merely interprets and clarifies existing statutory provisions.

The proposed rule will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The adoption of the proposed rule will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule will not affect small business because the new rule only interprets and clarifies property tax exemption law statutory provisions and does not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the adoption of the proposed rule interprets and make specific existing statutory law and does not impose any additional compliance or reporting requirements on private persons or businesses.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 136 has no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Sections 214 et seq. of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Ms. Mary Ann Alonzo, Senior Tax Counsel, at the State Board of Equalization, P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 324-1392; FAX (916) 323-3387, e-mail MaryAnn.Alonzo@boe.ca.gov.

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, e-mail Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joan Richmond, MIC: 80, P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) are available on the Internet at the Board's website <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the adoption of the proposed rule. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

STATE BOARD OF EQUALIZATION

/s/ Deborah Pellegrini

Deborah Pellegrini
Chief, Board Proceedings Division

DP:dgo
Attachments

**RULE 136 LIMITED LIABILITY COMPANIES AS QUALIFYING
ORGANIZATIONS FOR THE WELFARE EXEMPTION**

(a) A limited liability company may be a qualifying entity for welfare exemption purposes, if it is wholly owned by a qualifying organization or organizations and if it meets specific organizational and operating requirements.

(b) Qualifying Organization. A qualifying organization is an organization that is exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and that qualifies for exemption under section 214 of the Revenue and Taxation Code. A limited liability company is a qualifying organization if all its owner organization(s) (referred to as members) are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code. Each member shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code.

(c) Organizational Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the organizational requirements for purposes of the exemption, if its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed meets all of the following requirements:

- (1) A specific statement shall be included which limits the activities of the limited liability company to one or more exempt purposes, as specified in section 214. This requirement may be satisfied by a clause stating that the limited liability company is organized and operated exclusively for one or more exempt purpose(s) as specified in section 214 [religious, hospital, scientific or charitable].
- (2) The organizational language shall specify that the limited liability company is operated exclusively to further the exempt purpose(s) as specified in section 214, of its member(s).
- (3) The organizational language shall require that each member of the limited liability company be a qualifying organization under section 214 and exempt under section 501(c)(3) of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code.
- (4) The organizational language shall prohibit any direct or indirect transfer of any membership interest in the limited liability company to any nonqualified person or entity.
- (5) The organizational language shall provide an acceptable dedication clause. This requirement may be satisfied by a clause that irrevocably dedicates the property to one or more of the exempt purposes, as specified in sections 214 and 214.01.

- (6) The organizational language shall provide an acceptable dissolution clause. This requirement may be satisfied by a clause, which specifies that upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for exempt purposes, as specified in section 214, and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.
- (7) The organizational language shall require that any amendments to the limited liability company's articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed and to the operating agreement, be consistent with section 214.
- (8) The organizational language shall prohibit the limited liability company from merging with, or converting into, a for-profit entity.
- (9) The organizational language shall require that the limited liability company not distribute any assets to members who cease to be organizations described in section 214.
- (d) The limited liability company shall represent that its articles of organization are consistent with state law governing limited liability companies and are enforceable at law and in equity.
- (e) Operating Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the operational requirements for purposes of this exemption, by operating in accordance with its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed.
- (f) The limited liability company shall file with the county assessor, duplicate copies of certified Articles of Organization or the equivalent legally recognized formative document required under the laws of the jurisdiction where the entity is formed, and any certified amendments and restatements.
- (g) In the event that a member of the limited liability company ceases to be a qualifying welfare organization, as described in section 214, the limited liability company shall report this information to the assessor and the Board no later than the next annual filing deadline for the welfare exemption. Such event will serve to disqualify the limited liability company and its property from the welfare exemption.

Authority: Section 15606(c), Government Code.

Reference: Sections 214, 214.01, 214.02, 214.1, 214.2, 214.5, 214.8, 214.14 254, 254.5, 254.6, 255, 261, 270, 271, 75.21 and 75.22 of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

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